



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200702045**
Release Date: 1/12/07
Date: October 18, 2006

UIL 501.03-08

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required to Be Filed:

Tax Years:

Dear _____ :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosures
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 14, 2006

Contact Person:

Identification Number:

UIL 501.03-08

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =

B =

C =

D =

Dear _____ :

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (Code). Based on the information provided, we have determined that you failed to establish your qualification for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

You were incorporated on March 6, 2003 and filed your application for exemption on July 1, 2003. According to your articles of incorporation, you were organized for charitable and educational purposes. In your application, you state that your mission is "to create and foster high quality educational programs that enrich the lives of children and adults." The activities planned initially were threefold: (1) to provide technical assistance services to child care and pre-kindergarten programs to improve the quality of services provided to children and families; (2) to develop and maintain the A program, which is a program you developed that helps schools and other organizations raise additional income for the purpose of enhancing their

children's curriculum; and (3) to finish developing, field testing and revising your own educational games and books for retail marketing, in order to provide high quality products to the world and promote children's learning through fun activities.

You projected your sources of support to be from contracts for the technical assistance services, special events, the A program, individual contributions and sales from the marketing of the educational products to national and worldwide retail chain stores. At the time of your application, you had no revenue or assets and projected no revenue or expenses for 2003. In October 2003, you submitted your first application for a technical assistance contract that had not yet been awarded. As of March 2004, you indicate that all three programs had not yet been implemented.

Your initial by-laws provided for a 9-member board of directors. At that time, according to your application, you were in the process of selecting a board. By March 2004, according to your response to a letter from the Service requesting you to list the current members of your board of directors, you had 2 members and had revised your by-laws to provide for a 5-member board.

In correspondence dated June 11, 2004, you added to your activities a program called "B," which is a park that would be built in partnership with multiple Christian ministries to integrate bible stories and the books and games developed by you, along with other fun, educational religious-themed activities. At that time, you had begun a new program called "C", which involved collecting shoes and clothes to send to the children of Ethiopia, India and Haiti through various Christian ministries.

In a letter from you dated July 26, 2004, you changed your proposed activities to omit the A program, and modified the third program to give books to children (rather than sell them at retail). You added as part of the Technical Assistance program travel to Haiti to assess the needs of children in orphanages. At that time, a draft of a game board for children and a draft of an infant and toddler picture book were completed. Budgets were provided, which appeared to be predominantly projected budgets (but in any event it was not specified whether they were actual or proposed income and expenses), and, other than donations for the (newly named) "D" program, were mostly donations of time, money and like-kind contributions from the President, Vice-President and "Company Personnel" (which Vice-President and personnel were not identified).

In response to a letter from the Service requesting "detailed information on your current and proposed activities, including any public records (such as news articles, press releases, website, etc.) of your exempt activities," you responded by letter dated April 4, 2006 that you have changed your purposes solely to building a Christian theme park, which park would "support outreach ministries that teach the gospel of Jesus Christ worldwide as well as help children and adults in need." The revised by-laws provide that the board will be comprised of 7 Christian ministers and business people. According to this submission, you completed 4 outreach activities, including (1) collecting shoes and clothing for orphans in Haiti, (2) collecting and sending clothing, toiletries and cash for food and water to Haiti after the hurricane in Haiti, (3) collecting for the Tsunami survivors and phoning local churches asking them to donate through the local Red Cross, and (4) again collecting and sending clothing to orphaned children

in Haiti. You do not specify what the total costs or revenues were and what the sources of support were nor provide the names of any board members, or any public records.

Finally, you state that your future plans include "1) supporting Christian ministries that are doing outreach and teaching the Word of God in line with our mission, and 2) securing a committed, working board of directors to help plan, organize, fund raise, oversee operations and maintain in excellence (according to the Holy Bible) this Christian Theme Park." You do not provide a budget or detailed, tangible plans for the creation of the theme park. Your articles of incorporation have not been amended to change the purposes of the corporation to reflect the religious purposes.

Section 501(c)(3) of the Internal Revenue Code provides, in part, for exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (Regulations) states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. See also, American Science Foundation v. Commissioner, T.C. Memo. 1986-556. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

The Tax Court has stated that an application for tax-exempt status “calls for open and candid disclosure of all facts bearing upon [an Applicant’s] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3).” Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service’s determination that an organization has failed to establish exemption where the organization fails to provide requested information. “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities....Such generalizations do not satisfy us that [Applicant] qualifies for the exemption.” Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004).

An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. American Science Foundation v. Commissioner, T.C. Memo. 1986-556; La Verdad v. Commissioner, 82 T.C. 215, 219 (1984); Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983). The organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3). Share Network Foundation v. Commissioner, T.C. Memo, 1999-216. As recently stated by the U.S. Court of Federal Claims, “vague generalizations and conclusory expectations are insufficient to demonstrate that the application meets the operational test.” New Dynamics Foundation v. United States, 70 Fed.Cl. 782, 802 (2006), citing Church in Boston v. Commissioner, 71 T.C. 102, 106-07 (1978).

The information submitted, thus far, is insufficient for us to conclude that you are organized and operated exclusively for charitable, religious or educational purposes as specified in section 501(c)(3) of the Code. Specifically, we are unable to determine whether or not you are operated for purposes that come within the exempt purposes described in section 501(c)(3) of the Code for the following reasons.

Your initial purposes were educational and charitable, which were specifically educational in nature and targeted to child care and pre-kindergarten programs, as implied by the name of the corporation. Your mission stated that your purposes were “to create and foster high quality educational programs that enrich the lives of children and adults.” Of the original proposed activities or programs, after 3 years, the intended class of beneficiaries appears to not have benefited at all from the minor progress that was made by you, which included drafts of a game board and book. A year after you submitted your application, you indicated that all three programs had not been implemented yet.

You then began a new program collecting shoes and clothing for orphans in Haiti, added the Christian theme park program, eliminated the A program, and mentioned a program to travel to Haiti to assess the needs orphans. Finally, 2 years later, you changed your intended purposes again to solely the development of the Christian Theme Park, which could conceivably include activities of a commercial nature, and which would support Christian ministries worldwide. After 3 years, you completed 4 outreach activities, 2 involving the collection of shoes and clothing for orphans in Haiti, and the other two involving efforts to assist victims of a hurricane in Haiti and the Tsunami. The latter, while charitable and worthy causes, had no connection to the purposes proposed in your initial application. There is no indication in your submissions that you are currently performing any activities in furtherance of charitable, educational or religious purposes or that you will continue any of the activities that you have performed in the past.

At most, you have identified 2 board members, one of which currently may not be eligible as a board member under the revised by-laws, which require a board comprised of 7 Christian ministers and business people.

Details of fundraising projects and funds to be raised from the public were not provided, and the information submitted shows that funds for completed projects were in large part provided by you. Budgets and financial information submitted provided insufficient detail concerning actual income and expenses, proposed income and expenses (especially for the theme park, which would seem to be a complex and expensive undertaking), actual and proposed sources of funding, and actual and proposed fundraising plans.

Although you have stated that your mission is "To teach the gospel of Jesus Christ worldwide," and the vehicle through which your mission will be accomplished is "to develop and operate, in excellence, a Christian Theme Park," and you have also provided some broad ideas concerning the park, you have provided no plans for the location of the park, the projected date construction of the park will begin or when it will become operational, or tangible plans for the construction of the theme park. In fact, you state in your last submission that your future plans include "securing a committed, working board of directors to help plan, organize, fund raise, oversee operations and maintain" the Christian theme park. In fact, you have done very little towards the realization of such a theme park.

You have not presented the standards, criteria, procedures, or other means by which you intend to effectuate your current purposes, the anticipated sources of receipts, or the nature of contemplated expenditures, as required in Rev. Proc. 90-27, supra. In addition, vague generalizations and conclusory expectations are insufficient to demonstrate that you meet the operational test. Therefore, you have not established that you are operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file Federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service (IRS) may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,
Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements